

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #9	CCRB Case #: 201602484	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 03/24/2016 6:00 AM	Location of Incident: § 87(2)(b)	Precinct: 114	18 Mo. SOL 9/24/2017	EO SOL 9/24/2017	
Date/Time CV Reported Thu, 03/24/2016 1:39 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/24/2016 1:39 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			NARCBQN
2. LT Lina Ruiz	00000	938876	NARCBQN
3. CPT Brian Nyhus	00000	922882	NARCBQN
4. DT3 Anthony Votino	07170	931389	NARCBQN
5. An officer			NARCBQN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jhonnatan Sanchezpena	10623	947455	NARCBQN
2. DT3 Curt Thomas	5984	934296	NARCBQN

Officer(s)	Allegation	Investigator Recommendation
A.CPT Brian Nyhus	Abuse: Captain Brian Nyhus entered and searched § 87(2)(b) in Queens.	§ 87(2)(b)
B. Officers	Discourtesy: Officers spoke discourteously to § 87(2)(b)	§ 87(2)(b)
C.DT3 Anthony Votino	Force: Detective Anthony Votino pointed his gun at § 87(2)(b)	§ 87(2)(b)
D. An officer	Force: An officer pointed his gun at § 87(2)(b)	§ 87(2)(b)
E.DT3 Anthony Votino	Force: Detective Anthony Votino struck § 87(2)(b) with a police shield.	§ 87(2)(b)
F.CPT Brian Nyhus	Abuse: Captain Brian Nyhus threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
G.LT Lina Ruiz	Abuse: Lieutenant Lina Ruiz threatened to arrest § 87(2)(b)	§ 87(2)(b)
H.LT Lina Ruiz	Abuse: Lieutenant Lina Ruiz threatened to notify Administration for Children's Services.	§ 87(2)(b)
I.CPT Brian Nyhus	Abuse: Captain Brian Nyhus failed to show the search warrant to § 87(2)(b)	§ 87(2)(b)

Case Summary

On March 24, 2016, § 87(2)(b) filed this complaint on behalf of herself and her son, § 87(2)(b) with the CCRB via telephone.

On March 24, 2016, at approximately 6:00 a.m., Narcotics Borough Queens North officers arrived at § 87(2)(b)'s apartment at § 87(2)(b) in Queens pursuant to a valid search warrant. Present in the apartment at the time were § 87(2)(b) her boyfriend § 87(2)(b) and her children § 87(2)(b), § 87(2)(b), and § 87(2)(b). The officers forced open § 87(2)(b)'s door and an unidentified male officer allegedly ordered the occupants to "get on the fucking ground" and "get the fuck down" (**Allegations A and B**). Det. Anthony Votino entered § 87(2)(b)'s room and he and another officer pointed their guns towards § 87(2)(b)'s face (**Allegations C and D**). Det. Votino allegedly struck § 87(2)(b) in the head with a ballistics shield (**Allegation E**). § 87(2)(b) and § 87(2)(b) were brought to a couch in the living room. Captain Brian Nyhus allegedly told § 87(2)(b) "Sit down before I will sit you down," (**Allegation F**). Lt. Lina Ruiz allegedly told § 87(2)(b) to tell her where the guns and drugs were or she would be arrested, and her children would be taken from her (**Allegations G and H**). § 87(2)(b) was escorted out of the apartment and § 87(2)(b)'s children were retrieved from the apartment by their babysitter, § 87(2)(b). § 87(2)(b) was escorted to a prisoner van, where she was held for approximately 30 minutes before being released. During these 30 minutes, the officers searched through § 87(2)(b)'s apartment and recovered marijuana, ecstasy, and drug paraphernalia. § 87(2)(b) was arrested and charged with possession of narcotics with intent to sell. § 87(2)(b) alleged that she was never shown a search warrant (**Allegation I**).

There is no video footage associated with this case.

Mediation, Civil and Criminal Histories

- This case was deemed ineligible for mediation due to § 87(2)(b)'s arrest.
- As of May 9, 2016, no notice of claim has been filed in regards to this incident by § 87(2)(b) or § 87(2)(b) (Board Review 01).
- § 87(2)(b); §§ 86(1)(3)(4); § 87(2)(c)
- § 87(2)(b) does not have any prior criminal convictions (Board Review 03).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint in which § 87(2)(b) and § 87(2)(b) are involved (Board Review 04).
- Captain Brian Nyhus has been a member of the NYPD for 17 years and has 10 prior CCRB complaints involving five cases with two substantiated allegations (Board Review 05).
 - In CCRB case number 200611338, Captain Nyhus was the subject of Abuse – Frisk, Abuse – Search (of person), and Abuse – Stop allegations, all of which were closed as substantiated. The CCRB recommended charges and the NYPD imposed a penalty of Command Discipline – A for the Abuse – Search allegation and took no disciplinary action for the remaining allegations.

- Captain Nyhus was the subject of an Abuse – Premises Entered and/or Searched allegation in CCRB case number 201107426. This allegation was closed as exonerated.
- Det. Anthony Votino has been a member of the NYPD for 13 years and has 10 prior CCRB allegations involving six cases with no substantiated allegations (Board Review 06).
 - Det. Votino was the subject of a Force – Police Shield allegation in CCRB case number 201504383. This allegation was closed as unsubstantiated.
- Lt. Lina Ruiz has been a member of the NYPD for 10 years and has four prior CCRB allegations involving two cases with no substantiated allegations. § 87(2)(g)

Potential Issues

- § 87(2)(b) As such, no statement has been obtained from § 87(2)(b)
- Surveillance footage from NYCHA (Board Review 08) was received, but this footage only depicts the exterior of § 87(2)(b) and does not depict the fourth floor of the location.

Findings and Recommendations

Allegations Not Pleaded

- § 87(2)(b) alleged that officers damaged her front door, stove, and § 87(2)(b)'s dresser. This damage is corroborated by a video filmed by § 87(2)(b) after the search of her apartment was concluded (Board Review 09). § 87(2)(b) also stated that her keys, cell phone, and approximately \$2,600 in cash were seized from her apartment and that she was able to retrieve all of these items from the 114th Precinct stationhouse except for the case. Seeing as the officers possessed a valid no-knock search warrant (Board Review 10) and all of the items allegedly seized from § 87(2)(b)'s apartment were vouchered (Board Review 11), property damage and property seizure allegations are subsumed under Allegation A.
- § 87(2)(b) stated that she was brought downstairs to a prisoner van in police custody, where she remained for approximately 30 minutes before being released, during which time the officers searched her apartment. When she returned upstairs, Lt. Ruiz was still present in the hallway on the fourth floor. Seeing as § 87(2)(b) was only detained for the duration of the search of her apartment and was released once it was concluded, no detainment allegation is pleaded.
- § 87(2)(b) who babysits § 87(2)(b)'s children, alleged that a Hispanic male officer told § 87(2)(b) “Shut the fuck up. Sit down. You’ve got a smart mouth.” She also alleged that Lt. Ruiz called § 87(2)(b) a “smartass” and said, “Tell us where the fuck it is.” Seeing as § 87(2)(b) did not repeat these statements, allege that any profanities were uttered towards her directly, and did not allege any profanities aside from the ones used upon the officers’ entry, an additional Discourtesy – Word allegation is not being pleaded.

Allegation A – Abuse of Authority: Captain Brian Nyhus entered and searched § 87(2)(b) in Queens.

The investigation has determined that the search conducted at § 87(2)(b) in Queens was in accordance with a valid Queens County search warrant § 87(2)(b), which was issued by § 87(2)(b) (Board Review 10). Lt. Ruiz, Det. Votino, and PO Jhonnatan Sanchez-Pena are listed as the “Team Leader[s]” on the Tactical Plan (Board Review 12), and Lt. Ruiz stated that Captain Nyhus was the highest ranking officer on the scene and was in charge of the operation. § 87(2)(g)

Allegation B – Discourtesy: Officers spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that after the officers entered her apartment, “a couple of” male officers said, “Get the fuck on the ground, nobody move!” and, “Get down now! Get down now! Get the fuck down!” § 87(2)(b) heard these statements through her bedroom door and did not know which officers made these statements. § 87(2)(b) heard someone in the living room say, “Get the fuck down,” but he did not know which officer made this statement, § 87(2)(b) heard officers say, “Get down, get down, shut the fuck up,” through her floor (she lives directly above Apt. 4A), but she did not know which officer said this. None of the officers interviewed acknowledged making these statements, using profanities at any point, or hearing any other officer do so. § 87(2)(g)

Allegation C – Force: Detective Anthony Votino pointed his gun at § 87(2)(b)

Allegation D – Force: An officer pointed his gun at § 87(2)(b)

§ 87(2)(b) stated that Det. Votino and another male officer in plainclothes with a ballistic shield entered his bedroom and then pointed their guns towards his face. § 87(2)(b) stated that the lights in his bedroom were off and that his bedroom door had been closed. The unidentified officer returned to the living room approximately two seconds after entering § 87(2)(b)s bedroom, and Det. Votino holstered his gun once § 87(2)(b) was handcuffed. Neither § 87(2)(b) nor § 87(2)(b) personally observed any officer with his or her gun drawn.

Det. Votino stated that he entered the apartment with his gun drawn, held in front of his shield, and pointed in the direction that he was moving, as per his training. Det. Votino opened § 87(2)(b)s closed bedroom door and entered the room, where he observed § 87(2)(b) laying in his bed. At the time, Det. Votino held his gun slightly in front of his ballistic shield, still pointed straight outwards. There were lights in the bedroom, but Det. Votino did not recall how many and noted that it was “wasn’t pitch black” and that the lights on his ballistic shield were activated.

Det. Curt Thomas, who was present in the bedroom with Det. Votino, did not recall whether Det. Votino had his gun drawn and stated that neither he, nor Det. Votino, nor any other officer pointed his or her gun towards § 87(2)(b). Det. Thomas stated that the bedroom was dark and its lights were off.

§ 87(2)(b) described the second officer who pointed his gun towards him as a male officer in plainclothes with a ballistic shield. PO Sanchez-Pena was the only other officer who was

identified as carrying a ballistic shield during the incident. PO Sanchez-Pena acknowledged carrying a ballistic shield during the incident, but he denied entering § 87(2)(b)'s room before the search of the apartment commenced. Det. Votino and Det. Thomas were the only officers interviewed who acknowledged entering § 87(2)(b)'s room.

An officer may draw or point his firearm as long as he has a reasonable fear that his own life or the life of another is endangered (Police Department v. Gliner; OATH Index No. 955/00 (2000) – Board Review 13).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation E – Force: Detective Anthony Votino struck § 87(2)(b) with a police shield.

Allegation F – Abuse of Authority: Captain Brian Nyhus threatened § 87(2)(b) with the use of force.

Allegation G – Abuse of Authority: Lieutenant Lina Ruiz threatened to arrest § 87(2)(b)

Allegation H – Abuse of Authority: Lieutenant Lina Ruiz threatened to notify Administration of Children's Services.

Allegation I – Abuse of Authority: Captain Brian Nyhus failed to show the search warrant to § 87(2)(b)

§ 87(2)(b) stated that when § 87(2)(b) was escorted from his bedroom to the living room, he told her that an officer hit him in the top of the left side of his forehead with a flashlight. § 87(2)(b) did not observe this personally. § 87(2)(b) complained that his head hurt and § 87(2)(b) observed a small bump on § 87(2)(b)'s forehead. § 87(2)(b) asked what was going on and what this was about. In response, Captain Nyhus allegedly told § 87(2)(b) to sit down “before I sit you down,” and Lt. Ruiz allegedly told § 87(2)(b) that if she knew where drugs and guns were located, she would need to tell her immediately or she would be arrested and her children would be taken from her. § 87(2)(b) was allegedly never shown a search warrant.

§ 87(2)(b) stated that when the officers entered his room, he faced the officers and put his hands up near his head without the officers ordering him to do so. § 87(2)(b) was not doing anything with the rest of his body. § 87(2)(b) told the officers that he was just a kid. Immediately afterwards, Det. Votino allegedly hit § 87(2)(b) in the upper left corner of his forehead, near the corner of his hairline, with a ballistic shield. No officer hit § 87(2)(b) with a flashlight. The officers then told § 87(2)(b) to “freeze,” to get on the floor, and he complied. After § 87(2)(b) was brought to the living room, § 87(2)(b) asked an officer what they were looking for, if what they were doing was necessary, and stated that she goes to work every day and takes care of her family. Captain Nyhus allegedly replied, “Sit down or I’ll sit you down,” and told § 87(2)(b) that if she did not sit down, he was going to have ACS come to the apartment and take her children or arrest her. § 87(2)(b) stated that § 87(2)(b) asked the officers to show her a warrant while everyone was in the living room and one of the officers, § 87(2)(b) did not recall which),

told § 87(2)(b) that they were going to give the warrant to her. § 87(2)(b) was ultimately not shown a warrant. § 87(2)(b) went to school that day and suffered from a headache as a result of being hit with the ballistic shield. He was treated with an ice pack at school. § 87(2)(b) did not have any swelling, bruising, bleeding, broken bones, or visible injuries.

§ 87(2)(b) alleged that Lt. Ruiz said, “Just tell us where the fuck it is and it will be simple. You’ll risk losing your kids.” Lt. Ruiz did not tell § 87(2)(b) that she would lose her children if she did not say where the contraband was located. § 87(2)(b) did not hear any officer tell § 87(2)(b) that she would be arrested if she did not say where the guns or drugs were. § 87(2)(b) did not hear any officer threaten to arrest § 87(2)(b). § 87(2)(b) did not observe any officer show § 87(2)(b) or anyone else a search warrant or any other documents. § 87(2)(b) told § 87(2)(b) that he was struck with either a flashlight or a “stick,” which caused him to fall to the floor. § 87(2)(b) noted that she did not observe § 87(2)(b) being hit. § 87(2)(b) observed slight swelling on § 87(2)(b)’s forehead.

Det. Votino and Det. Thomas were the only two officers interviewed who were present in § 87(2)(b)’s bedroom. Det. Votino stated that he ordered § 87(2)(b) to show him his hands at least twice. § 87(2)(b) did not show Det. Votino his hands when he was ordered to do so. Instead, § 87(2)(b) sat up, tucked his hands underneath his blanket, and pulled them upwards while they were under the blanket. Det. Votino could not see § 87(2)(b)’s hands and did not know what was underneath the blanket, which caused him to fear for his safety. Det. Votino could not see under the blanket and believed § 87(2)(b) may have had a weapon. When asked whether he saw a bulge or anything else under the blanket indicative of a weapon, Det. Votino replied, “I couldn’t see anything the way it was being held.” Det. Votino then took his shield and used it to push § 87(2)(b) back down in an effort to gain § 87(2)(b)’s compliance, observe § 87(2)(b)’s hands, and abate the threat of any potential weapon. Det. Votino only pushed § 87(2)(b) once and did not strike § 87(2)(b) with the ballistic shield. Det. Votino’s shield made contact with § 87(2)(b)’s head and torso. As a result of the push, § 87(2)(b) went back down to a laying position. Det. Thomas stated that he instructed § 87(2)(b) to get on the ground and § 87(2)(b) immediately woke up from his sleep and went from the bed down to the floor on his own “right away.” Det. Thomas did not observe Det. Votino or any other officer push or strike § 87(2)(b) with a ballistic shield.

Captain Nyhus stated that he and Lt. Ruiz had copies of the search warrant in their possession and that Lt. Ruiz stated to him that she showed the warrant to § 87(2)(b) but he did not know at which point Lt. Ruiz did so. Lt. Ruiz stated that the arresting officer, PO Jhonnatan Sanchez-Pena, and each of the supervisors present, including Lt. Ruiz and Captain Nyhus, were carrying copies of the search warrant and that copy of the search warrant was shown to § 87(2)(b) by PO Sanchez-Pena. PO Sanchez-Pena stated that he showed the search warrant to each of the civilians while they were seated on the couch. Det. Votino and Det. Thomas did not observe any officer show the search warrant to the civilians and had no knowledge of any officer refusing to show the search warrants to any of the civilians.

All of the officers interviewed denied saying “Sit down or I’ll sit you down,” to § 87(2)(b) telling § 87(2)(b) that she would be arrested if she did not say where the guns or drugs were, threatening to arrest § 87(2)(b) threatening § 87(2)(b) with the use of force, telling § 87(2)(b)

§ 87(2)(b) that her children would be taken away from her if she did not say where the guns or drugs were, and threatening to have § 87(2)(b)'s children taken away from her. All of the officers interviewed also denied hearing any other officer make any of the above statements, threaten § 87(2)(b) with the use of force, threaten to arrest § 87(2)(b) and threaten to have § 87(2)(b)'s children taken away from her.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Squad: 9

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date